

Volume I
Pages 1 to 90
Exhibits A to G

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

— — — — —
GINA M. ALONGI, AS SHE IS ADMINISTRATOR,
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 4 HEALTH AND WELFARE
PENSION, ANNUITY AND SAVINGS FUNDS,
LABOR-MANAGEMENT COOPERATION TRUST AND
HOISTING AND PORTABLE ENGINEERS LOCAL 4
APPRENTICE AND TRAINING FUND,

Plaintiff(s),

v.

Civil Action
No. 17-12419 RWZ

ACCURATE ENGINEERED CONCRETE, INC.
AND FRANK J. FRANZONE, INC.
Defendant(s).

— — — — —
DEPOSITION OF FRANK J. FRANZONE, a witness called
by counsel for the Plaintiffs, taken pursuant to the
applicable rules, before Diane L. McElwee, RMR,
Certified Shorthand Reporter and Notary Public in and
for the Commonwealth of Massachusetts, at the Offices
of IUOE Local 4, 16 Trotter Drive, Medway,
Massachusetts, on Tuesday, November 13, 2018,
commencing at 11:44 AM.

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1 PRESENT:

2
3 INTERNATIONAL UNION OF OPERATING ENGINEERS
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10 for the Plaintiffs
11

12
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14 103 Grover St.
15 Beverly, MA 01915
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18 for the Defendants
19
20
21
22
23
24

FRANK J. FRANZONE

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I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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FRANK J. FRANZONE

by Mr. Geiman 4

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P R O C E E D I N G S

FRANK J. FRANZONE, a witness identified and sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GEIMAN:

Q Mr. Franzone --

A You can call me Frank.

Q Thank you, Frank.

My name is Greg Geiman. I represent
the Plaintiffs in this litigation between the
Plaintiffs and the Funds and Accurate Engineered
Concrete and Frank J. Franzone, Inc.

I know we already discussed, but if you
need me to restate or repeat a question, please let
me know. If you need me to speak louder, I am happy
to.

A Thank you.

Q I will remind you that any response needs to
be verbal so that our court reporter can take down
the notes of what we say.

MR. GEIMAN: And usual stipulations,
Amato? The Plaintiff will waive the requirement that
the Deponent needs read and sign the deposition, and

1 we will reserve objections except as to form until
2 trial.

3 MR. BOCCHINO: Okay. You mean you
4 will waive the requirement that he needs to sign it
5 before a notary?

6 MR. GEIMAN: Yes.

7 MR. BOCCHINO: He would like 30 days
8 to read and sign.

9 MR. GEIMAN: Yes, yes.

10 MR. BOCCHINO: Okay.

11 Q Frank, thank you again for coming in today.
12 Would you please state your name for
13 the record.

14 A Frank J. Franzone.

15 Q Okay. Frank, what is your home address?

16 A 5 Atkinson Farm Road, Atkinson,
17 New Hampshire.

18 Q Okay.

19 And let's speak a bit, if we could,
20 about your history. When did you first open Frank J.
21 Franzone, Inc., if you recall?

22 A I think I could. I think I was 23-years old
23 when I started my own company. It was a masonry
24 construction company.

1 Q Okay. And was that company also out of
2 Haverhill?

3 A Yes.

4 Q Okay.

5 And how about Accurate Engineered
6 concrete? Do you recall when you started that
7 company?

8 A My guess is probably about 30 years ago
9 because I have been active in the union for about 30,
10 35 years.

11 Q Okay. And what was the purpose at the time
12 of opening Accurate Engineered Concrete?

13 A Well, some of the work, most of the work we
14 were doing was nonunion. I was a mason contractor at
15 the time. I grew that company with 55 people working
16 for me.

17 In any case, I decided I wanted to join
18 the union and get some of that work if it was at all
19 possible. It didn't work that well for me at all in
20 the masonry construction business. Neither has it
21 worked that well for Accurate Engineered.

22 Q Okay. Are you a member of any union at this
23 point?

24 A I don't remember if I am, but I know I

1 signed a contract with the union. I know I have
2 signed contracts elsewhere with the union where we
3 have done some work.

4 Q Okay. But are you, yourself, a dues-paying
5 member of a union?

6 A I am not a member, no.

7 Q Okay.

8 And what is your position with Frank J.
9 Franzone, Inc.? What is your title currently?

10 A I am the owner/president of the company.

11 Q And what is your position, currently your
12 title with Accurate Engineered Concrete?

13 A I am still the owner and president.

14 Q Okay. And what is the principal place of
15 business of each company?

16 A One is 34 Newark Street, which is Engineered
17 Concrete, and the other is 36 Newark, which is
18 Accurate Engineered Concrete.

19 Q Okay. And again for clarification
20 "Engineered Concrete" refers to Frank Franzone, Inc.?

21 A Well, I think it was Frank J. Franzone, and
22 then it became d/b/a Accurate Engineered for various
23 and sundry reasons. I was advised by attorneys I am
24 sure.

1 Q Those attorneys always get in the way.

2 A No, not really.

3 Q Okay.

4 And who owns the building at 34, 36?

5 A I do, Frank Franzone.

6 Q Is it in your name or --

7 A I believe it is, yes. In my masonry days I
8 built it.

9 Q Really. How about that.

10 Okay. Is Frank J. Franzone currently
11 signatory to any union contracts?

12 A No, never has been.

13 Q Okay. And Accurate Engineered Concrete,
14 what unions are they signed with?

15 A I had some union contracts, and I gave them
16 all off. The reason for that is my two major people
17 that work with me, primarily Shaun Ryan and Brian
18 Davis, they both got injured almost at the same time,
19 a month apart. I was done. I was getting ready to
20 get done anyway. I really was. I am 87-years old
21 now, and I have had enough of working with other
22 people. Some of they are totally efficient, and a
23 lot of them are totally incompetent. That says
24 everything for today's people in my opinion, in my

1 humble opinion.

2 So we still maintain that company, but
3 it's going to be closed down. Sorry. I don't
4 maintain -- I have sold my gypsum company to Maxxon
5 Corporation, who are the people that used to supply
6 me with all materials for gypsum, which is the
7 engineered concrete.

8 Q So Accurate -- just again for clarification,
9 Accurate Engineered Concrete you have sold?

10 A No. Engineered concrete products only.
11 Accurate we still have.

12 Q Do you recall when engineered concrete
13 products were sold?

14 A I think probably two or three months ago
15 now. They have been after it for over a year. We
16 finally negotiated a deal, not a great deal, but I
17 was ready. I had no people working for me except
18 Ryan, and Cynthia does part-time work for me today
19 until such time that I find something else to do, if
20 I find something else to do.

21 Q Okay. And what is the name of the gypsum
22 company?

23 A That was Engineered Concrete Products.
24 That's what we used to do, gypsum.

1 Q And what's the name of the outfit that
2 purchased --

3 A Engineered Concrete Products purchased the
4 product. Oh, Maxxon. They are from Minnesota.

5 Q Is it M A --

6 A M A X X O N. They are buying up some small
7 companies. So far I think they have bought six
8 companies this year, people they have done business
9 with. They want to expand their company obviously,
10 and mine came up, and they were looking at it over a
11 year ago, two years ago, and they looked at it again,
12 and I finally said, The hell with it.

13 Then they had people come in my office,
14 my office building. They leased for three months
15 from me with a possibility of buying the building,
16 but I am not really sure whether they are ready to do
17 that.

18 Q Okay. So at this time -- strike that.

19 Do you still have any ownership
20 interest in Frank J. Franzone, Incorporated?

21 A That's a good question. Do I still have an
22 interest in Frank J. Franzone.

23 Q Do you have an ownership interest --

24 A Engineered Concrete, no.

1 Q Okay. So Maxxon owns that?

2 A They took the name, took the phone numbers,
3 and part of it was equipment that I had that was part
4 of the deal.

5 Q So of the two companies that we have been
6 discussing, Frank J. Franzone and Accurate Engineered
7 Concrete, you currently only own Accurate?

8 A Accurate, that's correct.

9 Q Okay.
10 Do you know, Frank, if Maxxon was aware
11 of this lawsuit?

12 A I think they were, yes.

13 (Pause)

14 Q Okay.

15 During the time, Frank, that you did
16 own both companies, Franzone -- and just for
17 simplification, I will refer to Franzone -- actually
18 I will use Engineered and Accurate.

19 A Easier for me, too, yes.

20 Q In the time that you did own Engineered and
21 Accurate, what type of work did each company perform?

22 A More often than not -- well, I have done
23 both. I have done both, did a very small amount of
24 union work using gypsum for a couple of major

1 contractors.

2 When I gave up, you know, the whole
3 deal in reference to union work was because I had no
4 crew to do it. I gave it off to a company, SPS.
5 They are from Salisbury. I gave them off a
6 million-plus dollars of work. They are friends of
7 mine. They took it so I wouldn't leave anybody high
8 and dry. They have a contractor, and they took all
9 the contracts. I gave them to him, no money
10 exchanged, no nothing. It was just a deal. I just
11 wanted to make sure the customers that I had were
12 taken care of.

13 Q And this was your Engineered business or
14 your Accurate?

15 A My Accurate.

16 Q Your Accurate business.

17 A Yes.

18 Q Do you remember when that happened, when SPS
19 made that purchase?

20 A It has to be four or five months ago now.

21 Q Okay.

22 MR. BOCCHINO: I am going to object.
23 No one said "purchase." You said "purchase."

24 MR. GEIMAN: Okay. I will take back

1 "purchase."

2 Q When there was a deal, an understanding
3 between you and SPS, that was four or five months
4 ago?

5 A Maybe five months, maybe even further back
6 than that.

7 I know most of the work has been done.
8 I remember them coming in and telling me the first
9 job they did was Downtown Boston. I was a little
10 infuriated with them because they jacked the price up
11 20,000 bucks, and the guy paid it. What they did is
12 they also changed the materials they were going to
13 use. So I told them that it's not a good idea
14 because it's going come back to me for 20,000 bucks,
15 and you are going to pay it. It's not my material.
16 You changed the spec. Good luck. You have \$20,000
17 more. Good luck. Don't come looking for me for it
18 because I am not going to be able to handle that.

19 Q Okay.

20 And what was the purpose, Frank, from
21 your perspective of that understanding with SPS? Why
22 have that arrangement with SPS at that time?

23 A Because I was concerned. I had no crew to
24 do the work, nobody. I was concerned that they were

1 taken care of, the clients that I had. Had I had a
2 lot of them, it would have been a totally different
3 story. But that was my target. It never came to
4 fruition. Doing all union work is what my target
5 was.

6 Anyway, you are the fellow that's going
7 to ask the questions. I will just answer for you the
8 best I can.

9 Q Okay. I appreciate that.

10 My understanding is Mr. Davis was out
11 of work on worker's compensation. He is back off
12 of --

13 A They offered him a disability. What he
14 really needs is an operation. That's my opinion, but
15 I am not a doctor either. I still have him working
16 around me, and he still does some work for me union,
17 maybe once every two weeks or three weeks.

18 We have an ongoing contract with a very
19 good contractor, S&F, and they are good people. I
20 have known Rodney for a good number of years and his
21 father. They are right here in Hudson, Mass. They
22 asked me to take this on because there was no one
23 else doing lightweight, so we took the job on.
24 Periodically he will call. I think we did one floor

1 for them a couple of weeks ago, ten yards of
2 concrete. They are a good customer, good people to
3 work with. They have a good reputation, not unlike
4 myself, much smaller scale.

5 Q Okay.

6 A And I took that on because they are friends
7 of mine, and I left everything else on the table
8 because they couldn't do lightweight concrete anyway,
9 SPS. The only person who does it is me.

10 Q Okay. So are there any other contracts that
11 you did have before Mr. Davis was injured that SPS
12 still has, or did SPS --

13 A I don't -- I would imagine they are probably
14 done with them.

15 Q So you are not actively bidding new business
16 now?

17 A No, no.

18 Q Just S&F happened to ask you --

19 A I am not bidding anything. I am not bidding
20 SPS. I am not bidding Engineered. I am not bidding
21 Accurate.

22 Q Okay.

23 Do you have any plans to bid for
24 Accurate going forward?

1 A No, no, I do not.

2 Q Okay. What's the long-term plan for
3 Accurate?

4 A There is none presently. There is none
5 sincerely. There is no plan for Accurate for the
6 future.

7 Q Okay.

8 Since the time that Maxxon -- is it
9 Maxxon?

10 A Maxxon.

11 Q Maxxon. Thank you.

12 -- purchased the assets of Engineered
13 Concrete, have you and your employees been paid on
14 the Accurate payroll?

15 A I only have my nephew Brian right now, and
16 he is paid on both. If he does a day's work for me,
17 the company Accurate, he gets paid union rate. The
18 rest of the time -- right now he is probably working
19 at my yard. I am trying to -- I try to keep him
20 employed. He probably works four or five hours a
21 day. He still gets his full week's pay from
22 Engineered and the two of them combined.

23 Q Okay. And I guess that's my confusion.

24 A Why is that confusing?

1 Q Maybe it's just me.

2 How is there still an Engineered
3 payroll if Engineered was sold?

4 A Well, we still have some receivables for
5 Engineered. It's open right now, but it's going to
6 be closed, and the sooner the better because they
7 want me -- they have taken the name. It's between
8 Brian, myself, and Cynthia gets paid something from
9 me as well.

10 Q Right.

11 A She works twenty hours a week or ten hours,
12 whatever she does, and I pay her 30 bucks an hour,
13 and we cut a check for her.

14 Q Okay. And that's all still presently on the
15 Engineered --

16 A That's correct.

17 Q -- payroll until everything --

18 A That's correct. The only thing that's taken
19 out of Accurate Engineered is the days that Brian
20 works on a union job, and there is one other fellow
21 that works part time with us now, and he works with
22 him. He is a laborer.

23 Q Okay.

24 A So the two of them get paid union rate for

1 that particular day. Most often they work about
2 three hours, and that's okay. I have no problem with
3 that at all, never had. If the guys ever worked
4 through the half hour that they are supposed to take
5 their break, they got paid for that, too.

6 Everyone got paid. Believe me. They
7 got paid. I would never do anything like that in my
8 life.

9 Q Okay. And they would get an eight-hour
10 day --

11 A They get --

12 Q -- regardless of how many hours they work?

13 A Not necessarily, because I think laborers,
14 if they work less than four hours, you don't have to
15 pay them for the day. Otherwise, if they work over,
16 then they get paid. If they work through lunch, what
17 we would do -- as a matter of fact, with lightweight
18 concrete and/or gypsum, because we have done work
19 with union companies using gypsum product, they would
20 get paid every day for all their hours. If anything,
21 they got paid more than what they should have been
22 paid, and that's not unusual for me.

23 Q Okay.

24 A I did it when I was a young man. If someone

1 worked work eight and a half hours, they got
2 eight and a half hours. If they worked eight hours
3 and fifteen minutes, they didn't get paid fifteen
4 minutes. If they were eight hours and sixteen
5 minutes, they got paid for the half hour. That was
6 the arrangement I made years ago with the people who
7 worked with me because I thought it was fair.

8 Q Right, right. Okay.

9 During the time, Frank, that you owned
10 Engineered and Accurate --

11 A Yes, sir.

12 Q -- where did the companies do most of their
13 work?

14 A Engineered concrete.

15 Q But in what region? Was it just in
16 New England?

17 A Yes, basically New England. I don't think
18 we ever went -- no, we never went to New York with
19 gypsum, never. There is other applicators out there.
20 It would cost them too much money to get me out there
21 to begin with.

22 Q Right.

23 A So it was generally New England, Maine,
24 New Hampshire, Massachusetts, sometimes Connecticut,

1 but I don't even remember going to Connecticut. Yes,
2 we did a couple of small jobs in Connecticut for
3 ProCon years ago. They were a company here in
4 New Hampshire. We used to do a lot of their work.

5 Q Okay.

6 When you were the owner of Engineered,
7 were you the only officer of that corporation?

8 A I think my brother-in-law might be, but I am
9 not really sure. I don't remember. It's been a long
10 time.

11 Q What's your brother-in-law's name?

12 A Ralph Gaeta. He lives in Stoneham, Mass.

13 Q Okay. Did he have to weigh in when you made
14 the decision to sell --

15 A No.

16 Q -- Engineered? No.

17 A No. Nobody had to weigh in.

18 Q Just you?

19 A Just me. It was a sad day, too.

20 Q Yes.

21 How about Accurate, Frank? Are there
22 any other officers of Accurate besides yourself?

23 A No.

24 Q Have there ever been?

1 A I don't recall. I really don't. It's been
2 30-some-odd years ago, maybe 40.

3 Q Okay.

4 Who oversees payroll for both
5 companies?

6 A Payroll was given over to a payroll company
7 via Cynthia. She accumulates the hours and marks
8 them all down and makes a phone call, and the checks
9 normally come in on a Thursday, the day before. I
10 sign them so that they are ready for Friday in the
11 event they were working or not working, and fellows
12 could pick up their checks, whatever.

13 Q Okay. And Cynthia, to your knowledge, she
14 tracks the hours just based on --

15 A She based the hours based on what Shaun Ryan
16 would bring back or Brian would bring back.

17 Q Okay.

18 On a day-to-day basis who tells Brian
19 or in the past Shaun where they are going that day?

20 A There was a sheet that was made out on a
21 daily basis via Cynthia in coordination with Shaun,
22 who is generally the guy who is handling outside
23 everything; and sometimes he would work inside with
24 me estimating work when we didn't have other work.

1 So they would get together and would designate how
2 many people, six people, five people, seven people,
3 how many bags of product we would put on a truck, how
4 much isolation would be taken, how much latex would
5 be taken, so forth. So all that was written down on
6 a worksheet. That worksheet was put on a bulletin
7 board in the outside area, and that was taken with
8 them, including the temperatures and everything else
9 that's necessary in the gypsum business.

10 Q Okay. And you would give that information
11 to Cynthia?

12 A No. It was on my worksheets that I
13 prepared.

14 I still do things the old-fashioned way
15 if I am going to do something. So I generally have a
16 pretty good knowledge of what's out there and what
17 should be happening. If I think the job requires
18 six people, I will mark right on it six people. If I
19 think it requires two, I will mark right on it two.
20 I tell them how many bags of product on each job,
21 because we might go to one job several different
22 times, different floors.

23 What I try do when I put something
24 together, if you give me a building with a hundred

1 thousand square feet, if it was a ten-story building,
2 it's pretty easy. I want you to you do 10,000 square
3 feet per day. You can do that with six people very
4 readily.

5 Q Right.

6 A And other jobs it would change, and that
7 would changed based on configuration of the building.
8 I did all of that. It was then handed to Cynthia.
9 That's how a proposal -- my worksheet would be
10 connected with my proposal. So anything she wanted
11 to look at in reference to that job, the number of
12 people and number of square feet that were necessary
13 to do, she would apply that and put that on a
14 worksheet.

15 Q Okay.

16 Did Brian Davis and Shaun Ryan
17 generally work together? Were they both necessary in
18 order to --

19 A At one time Brian was an outside man. He
20 was running the show. Brian is my nephew by the way,
21 and I wasn't totally happy with Brian. So I switched
22 over to Shaun because Shaun is a little bit brighter.
23 Put it that way.

24 Q Okay.

1 A Brian is an excellent worker, but sometimes
2 he loses track of things, you know, would put down
3 six people and come back with seven. What the hell.
4 Why are they paying somebody that wasn't even on the
5 job?

6 So that kind of thing would slip by.
7 After a while I got a little disgusted with it and
8 decided I had to make a move for everyone's benefit.

9 Q Okay.

10 Frank, I am going to give you something
11 to look at. We will call this Exhibit A. Let me
12 know when you have had a chance to look at that.

13 (Exhibit A marked for identification)

14 (Pause)

15 A This is dated '92?

16 Q It is.

17 (Pause)

18 A Well, it's certainly my signature.

19 MR. BOCCHINO: Frank, we will wait
20 for Greg to ask you a question.

21 THE WITNESS: I am sorry.

22 Q That's quite all right. You read my mind.
23 I was going to ask you --

24 A I am not going to read all of this. It's an

1 agreement. My signature is on it.

2 Q That is your signature at the bottom?

3 A That's exactly right.

4 Q Okay. And this is what the union refers to
5 as a short form agreement.

6 A Okay.

7 Q And in the union's estimation this would
8 obligate you to the collective bargaining agreement
9 that was in effect at the time and subsequent
10 collective bargaining agreements.

11 I won't ask if you remember signing
12 this per say, but you do remember --

13 A I did sign it. Whether or not I understood
14 it, that's another story. It really didn't matter at
15 that point in time.

16 Q But you do recall generally signing an
17 agreement with Local 4 for Accurate?

18 A It's pretty obvious I signed this and other
19 agreements for Accurate. To my knowledge this may be
20 the only one. I am not really sure. You would
21 probably know that better than myself.

22 Q Okay. And do you remember why, Frank, you
23 decided to sign an agreement with Local 4 back in
24 1992?

1 A I don't think there was anything adverse to
2 it. We were trying to advance and do more union
3 work. The purpose of doing all of this was to get
4 work that the fellows could make more money with
5 period. That's exactly what the purpose was.

6 I paid for all their dues. If you look
7 at your records, you will find that checks came in
8 from Frank J. Franzone and Accurate Engineered
9 Concrete. I am sorry. That went for their dues for
10 all of them, for all of them. I didn't have to do
11 that.

12 Q Right.

13 A Anyway...

14 MR. GEIMAN: Okay. And this we will
15 mark as Exhibit B. I surely don't expect you to read
16 all of this.

17 (Exhibit B marked for identification)

18 (Discussion off the record)

19 Q So this is --

20 A -- the Master Document.

21 Q This is the collective bargaining agreement.
22 This is a more recent version of the document that
23 you signed.

24 A So this replaces this (indicating)?

1 Q Actually, no. This short form agreement is
2 what would tie, according to the union, and would
3 obligate you to the terms of this collective bargain
4 agreement.

5 Have you ever seen the Local 4
6 collective bargaining agreement before? Do you have
7 any memory of reviewing it?

8 A No, I don't.

9 Q Okay.

10 The reason that I wanted you to take a
11 look at this, Frank, is because there are provisions
12 in the collective bargain agreement that are forming
13 the basis in large part of the plaintiff's claim. I
14 just wanted to point them out to you.

15 The first, if you turn to page 23 --

16 A Excuse me. The plaintiff claim, there are
17 three people involved?

18 Q Well, The benefit funds.

19 MR. BOCCHINO: One lady.

20 Q Gina Alongi, the Administrator.

21 MR. BOCCHINO: The operators union.

22 A Oh, okay. I thought we were referring to
23 the people that brought a complaint to me or to you
24 about me.

1 MR. BOCCHINO: No, no, not those
2 guys. Let's see what he wants to ask about.

3 Q No. This is the Local 4 Funds case. It
4 involves the fringe benefits contribution payments.

5 If you could take a look on this
6 document, page 23. If you look -- actually I
7 apologize. It's page 21, which is right above.

8 A I see that.

9 Q I was going to refer to you Part A,
10 Article III, Section 3, which is in that right-hand
11 column. If you would, if you could read --

12 A Section 3? You want me to read that?

13 Q Sure.

14 A "An employee --

15 Q I am sorry. The one up above. You see?

16 A Section 2?

17 Q Section 3, if you look up here.

18 A You asked me to look at 21, page 21.

19 Q Yes, which is the one right up here
20 (indicating). If you take a look at this --

21 A Okay. I was down below.

22 Q That's okay.

23 A "The terms of this Agreement shall apply to
24 all work usually and customarily performed by Local 4

1 and its Branches within its craft jurisdiction."

2 Q So the reason I asked you to read that and
3 put it in the record -- and then I want to have a
4 discussion with you about it -- do you recall ever
5 having a conversation with anybody at Local 4 with
6 regard to work by Mr. Davis and Mr. Ryan and whether
7 Local 4 provided any sort of permission or
8 authorization or any other, you know, any other sort
9 of blessing to having Mr. Davis and Mr. Ryan do work
10 for Engineered Concrete as opposed to --

11 A I don't remember ever having a conversation
12 with anyone with regards to what you just referred
13 to.

14 Q Do you ever remember having a conversation
15 with anybody about the obligation to pay fringe
16 benefit contributions for all work done by Mr. Davis
17 or Mr. Ryan?

18 A No, I do not.

19 Q Okay.

20 Were you aware that Mr. Davis and
21 Mr. Ryan were members of Local 4; that they have
22 union books?

23 A Yes. I still pay for them.

24 Q Okay.

1 A I have been paying for them, yes.

2 Q Right. Okay.

3 Were you ever told when you signed your
4 agreement with Local 4 that you only needed to pay
5 contributions on union jobs as opposed to nonunion
6 jobs? Did anyone ever tell you that?

7 A No.

8 Q Okay. And you have been aware generally
9 since 1992 that you have a contract, Accurate
10 Engineered has a contract --

11 A I was made aware of it again, if that's the
12 case.

13 Q Okay.

14 What was your basis, Frank, for
15 deciding at some point that you didn't need to pay
16 contributions for work done by Engineered Concrete?
17 And let me be more specific. For work done by
18 Mr. Davis and Mr. Ryan for Engineered Concrete, what
19 was the basis for that decision, do you recall?

20 A I am quite sure that I talked to the boys
21 about that; that if you do a union job, you will get
22 paid a union rate, whatever it is. Since we don't
23 have a lot of union work, there is no alternative if
24 you want to work. You have to work with Engineered,

1 and you will take that rate, and that was agreed
2 upon.

3 Q Okay.

4 A I don't have to repeat myself. My target
5 was to get all union work. That was my target.

6 Q Right.

7 A If ever I were to do this again, that would
8 be my target.

9 Q Okay.

10 When you realized at some point that
11 that goal may not be met to have all union work and
12 you had less union work than you needed to keep
13 Mr. Davis and Mr. --

14 A I recognized it all the way. We never had
15 enough work. I am not going to repeat. I am not
16 going to say --

17 MR. BOCCHINO: Wait. Let Greg ask
18 his next question, Frank.

19 Q What was the tipping point, if you remember?
20 What was the --

21 A There was no tipping point.

22 Q Well, at some point you sat down with Brian
23 and Shaun and said --

24 A Probably before we even signed the contract

1 that went into the union we probably talked about
2 that. Look, I am going to do this, and if we get
3 union work, then you get all the benefits and
4 everything.

5 Unfortunately I didn't recognize all
6 the rules. I think they had to work 200 hours per
7 year, something like that, to get any benefits.

8 All the monies that ever went into the
9 union in my opinion you guys got. You keep it. They
10 didn't get anything. It wasn't doing anything for
11 me. I was trying do something for them. It didn't
12 work out because we never got enough hours with these
13 fellows to really get the benefit of being in the
14 union and doing this kind of work and preserving some
15 monies to do. I guess they get their pension.
16 That's about all they are going to get.

17 Even today, no matter who brought this
18 thing about, they are of the opinion they will end up
19 winning a lot of money. I don't know that to be
20 true. I think if something would have happened like
21 that that they would get nothing anyway.

22 Q Okay.

23 Do you recall sitting down with
24 Mr. Davis and Mr. Ryan when you made the decision to

1 have them start working for Engineered Concrete?

2 A Do I recall a specific time and date? No, I
3 really don't.

4 Q Not a time and date but just --

5 A No, I really don't. I would assume when I
6 signing this here in 1992, which is the time I signed
7 this, that we had already talked about this. They
8 all agreed. I don't think they are in disagreement
9 today. I think they feel that I have treated them
10 fairly, and I always have, and I am still treating my
11 nephew more than fairly. He gets a check every week.

12 Q Right, right.

13 When they were working for Accurate
14 exclusively --

15 A Yes.

16 Q -- do you recall that they were getting a
17 40-hour week? You were paying them a full week on
18 the Accurate payroll?

19 A I think when we put them in -- I think it
20 was a year or two years that Cynthia reminded me
21 of -- I didn't even know -- that we said, Okay, we
22 are going to pay you.

23 It was probably easier for me to do
24 that at that time than it was trying to delete one

1 from the other and so forth. Maybe we even -- that
2 would be part of the reason I am sure.

3 Q Okay. Okay. And just to ask again, when
4 you made the decision to move these gentlemen to the
5 Engineered Concrete payroll, do you recall talking
6 to --

7 A They were always Engineered Concrete payroll
8 from Day One. We were Engineered Concrete way before
9 we were Accurate Engineered Concrete. These fellows
10 had worked for me I would say between the two of them
11 maybe 50 years. They are both 55-, 56-years old. My
12 nephew started when he was 18-years old. Shaun was
13 in and out. He started basically about the same
14 time. Maybe later. He is a little bit older.

15 Q Okay.

16 But to clarify, there was a period of
17 time, was there not, when both Shaun and Brian were
18 being paid exclusively on the Accurate payroll?

19 A I think there was, yes.

20 Q And when you made the decision around 2009
21 to make the switch, do you recall talking to anybody
22 at Local 4 about it, or that was just your decision?

23 A No, I never did. I never did. The only
24 person I was ever introduced to in the union was Lou

1 Mandarini, and he was in the North End of Boston. He
2 helped me out a couple of times on a couple of
3 problems I was having, and that was in relation to
4 laborers only.

5 Q Okay.

6 A My recollection is there was some guy that
7 was giving us a bad time whenever we went into
8 Boston. I can name his name, but I won't do that
9 either. He got him straightened out.

10 Q Okay. But nobody at Local 4 that you recall
11 talking to?

12 A No, no. I never met anyone at Local 4, not
13 to my recollection. If they came to my office and
14 introduced themselves, I don't remember that
15 happening.

16 Q Okay.

17 And when you sat down to speak with
18 Mr. Ryan and Mr. Davis -- and I know you don't recall
19 specifics -- they were generally agreeable, is that
20 your memory, to this idea?

21 A Yes. They would be fools if they didn't
22 agree because I wouldn't have taken on any work. The
23 object was to try and get some union work so they
24 could earn more money.

1 Q Right, right.

2 A And I could earn some more money, too, if it
3 was successful.

4 Q Right.

5 And the reason I ask, Frank, is because
6 when you switched them over, when the switch happened
7 around 2009, they had been, as we said, receiving
8 40 hours from Accurate, 40-hour weeks. So they were
9 getting paid the union rate, and they were getting
10 fringe benefit contributions. When you moved them
11 over to the Engineered Concrete payroll, do you
12 recall what you paid them at that point?

13 A No, I don't.

14 Q Okay. Do you recall if it was less than the
15 union rate?

16 A More than likely it would have been, yes.

17 Q Okay. And did you pay fringe benefit
18 contributions for their work for Engineered Concrete?

19 A I don't really remember. I don't know.

20 Q Okay.

21 Let me switch gears for a second.

22 A Okay.

23 Q And by the way, I should have mentioned this
24 at the outset. If you need a take a break at any

1 point, let me know.

2 A No, I am fine. Thank you very much.

3 Q Please just let me know.

4 To your memory, Frank, have Accurate
5 and Franzone ever worked on the same job?

6 A I don't think so, no. If it was a union
7 job, we were strictly union. If it wasn't union, it
8 was strictly Engineered.

9 Q Okay.

10 Do the two companies or have the
11 two companies ever worked at separate times for the
12 same general contractor? Is there a possibility that
13 a general contractor would be on a union job, as you
14 put it, one Accurate and then a year later be on a
15 nonunion job and one Franzone? Do you ever recall
16 that?

17 A Not to my recollection, Greg, no, no. I try
18 to keep that all separate all the time.

19 Q Okay.

20 A In fact, I think we did keep it separate all
21 the time.

22 Q All right.

23 And how do you determine in your
24 position, Frank, whether a job should be bid by

1 Accurate or by Franzone -- by Accurate or by
2 Engineered Concrete?

3 A I understand.

4 We would ask if it was a union job or
5 nonunion job because it makes a difference in the
6 numbers, makes considerable difference in the
7 numbers.

8 Q Sure.

9 A That being said, we would know who we are
10 bidding it for. We had Accurate Engineered period,
11 and we had Engineered Concrete Products.

12 Q Okay.

13 A Separate.

14 Q Okay.

15 Did you ever employ any operating
16 engineers that you recall other than -- oh, thank
17 you.

18 A That's Accurate Engineered.

19 (Business card handed to counsel)

20 MR. GEIMAN: Let him look before --

21 MR. BOCCHINO: These are the cards?

22 THE WITNESS: Yes.

23 MR. GEIMAN: He is doing his job.

24 THE WITNESS: I understand he is

1 doing his job. If he decided he didn't want you to
2 see it, you wouldn't see it.

3 MR. GEIMAN: Of course. And I
4 wouldn't have it any other way.

5 Q Do you recall employing any other operating
6 engineers other than Brian Davis or Shaun Ryan at any
7 point since signing with the union anyway?

8 A Did I ever -- no, no.

9 Q Okay.

10 I am going to ask you to take a look at
11 another piece of paper here. Exhibit C, please.

12 You can let me know when you have had a
13 chance to look at that, Frank.

14 (Exhibit C marked for identification)

15 A It's sporadic, so that tells me something.

16 Go ahead.

17 Q I wanted to ask you about the payroll
18 register.

19 As you can see, the first page is for
20 Frank J. Franzone, and the second page is for
21 Accurate Engineered Concrete, same week, the week of
22 September 3d of last year.

23 A Where do you see Engineered Concrete? I
24 don't see it.

1 Q The second page.

2 A Oh, here is Accurate Engineering at the
3 bottom, yes. It says, Frank J. Franzone. Okay. I
4 am sorry.

5 Q That's okay.

6 The reason I wanted you to take a look
7 at this is it's the same week. As you can see,
8 Mr. Davis and Mr. Ryan received pay for hours worked
9 for Frank J. Franzone on the first page. It looks
10 like Mr. Davis had 36 hours that week, including some
11 overtime and some holiday pay, and same for Mr. Ryan.

12 Then on the second page for Accurate it
13 looks like each of Mr. Davis and Mr. Ryan had
14 eight hours of pay.

15 Q Now I wouldn't expect you to recollect that
16 week specifically.

17 A No, I don't. I hope they were right.

18 Q Is this an example of what you have been
19 referring to that there are weeks in which Mr. Davis
20 and Mr. Ryan could work on union and nonunion jobs
21 and --

22 A Yes.

23 Q Could you explain that to me? Explain how
24 maybe the machination of a given week how Mr. Davis

1 and Mr. Ryan might be on both payrolls, might be paid
2 by Accurate and by Franzone.

3 A The first one I have two holidays,
4 two holidays included in the payroll for Frank J.
5 Franzone. That was \$1,140 I guess for the week,
6 regular pay, thirty; overtime, I guess it's
7 four hours. There was two holidays.

8 Q Okay.

9 A So if that's the same week, if there were
10 holidays, maybe we worked another job for Accurate.
11 I don't know.

12 Q So does it look to you from these two pages
13 that there was one day where these gentlemen worked
14 on a union job for Accurate?

15 A Yes. That's what I would say, yes. We
16 worked one day for Accurate, and the rest of the week
17 we worked, and there were two holidays. I don't know
18 what the hell that is. Excuse me.

19 Q And holidays, Frank, would those be paid out
20 of the Franzone payroll or the Accurate payroll?

21 A Depends on which holiday and where they were
22 working, you know. If they are working on a union
23 job, they got paid that day as well.

24 Q I see.

1 A It's not uncommon. We did it not too long
2 ago. There were a couple of holidays that we came
3 through that we had to pay, and that was okay.

4 Q So if the holiday came in the midst of an
5 Accurate job, let's assume --

6 A They would be paid by Accurate.

7 Q If they worked on an Accurate job Friday,
8 and Monday is a holiday, but they are back to work
9 for Accurate Tuesday --

10 A I don't know about that. I really don't.

11 Q Okay. And I am using that just as an
12 example.

13 A I really don't know that. I don't know
14 that.

15 Q Okay. But there are times --

16 A Who would know that better than myself would
17 be Cynthia. She had her hand on all this stuff. If
18 I said something and I was wrong, She would tell me,
19 No, you are wrong. You do this.

20 I would say, Okay, let's do it.

21 Q Okay.

22 The last one I wanted to ask you about
23 on the first page, the Franzone page, next to regular
24 pay, what is the hourly rate that Mr. Davis and

1 Mr. Ryan are receiving for Franzone? Do you see that
2 there next to regular pay?

3 A Regular pay I think is \$30, right? Even
4 with my glasses I can't see this. That's not fair.
5 You guys should blow these things up more.

6 Q It is very small.

7 Then on the second page, if you would,
8 Frank, for Accurate Engineered Concrete next to
9 Mr. Davis and Mr. Ryan, regular pay, do you see what
10 the rate was for the work for Accurate?

11 A The one I am looking at for Ryan doesn't
12 give you a rate I don't think. It gives me a total
13 for the year I think. I am not sure. 128? I don't
14 know what the hell this is.

15 Q Yes, that's 128 hours.

16 A 128 hours. Okay.

17 Q If you look to the left, you will see, to
18 use Mr. Davis as an example, you will see his name,
19 his tax withholdings, and then there is a
20 description. It says, Zero, dash, regular pay, and
21 next to that is the rate.

22 Do you see that there?

23 A No, I don't. I am sorry.

24 Q That's okay.

1 A Wait a minute. Rate is way back here
2 (indicating).

3 Q This box (indicating).

4 A That box right there (indicating). \$41? Is
5 that it?

6 Q No.

7 A You are looking at -- I am looking at Ryan.
8 They are both the same.

9 Q Yes.

10 A 54. Wait a minute. Wow, I have got to get
11 some new glasses. Gees. It was \$54.11 I think.

12 Q Thank you.

13 A Right?

14 Q Yes, that's what I see. And you would have
15 paid fringe benefit contributions for those hours?

16 A Yes.

17 Q Okay.

18 A Oh, yes.

19 Q Thank you.

20 A You are welcome.

21 Do you need this back?

22 Q No. That's yours to keep.

23 A Thank you.

24 Q We have door prizes.

1 Okay. Frank, when you were bidding a
2 job and a general contractor said to you this is a
3 union job or this is a nonunion job, did you or
4 anybody in your office ever research that, or
5 whatever the general contractor said, that's what it
6 was?

7 A Yes. Whatever he said is what I would do.
8 If he said he wanted a price on both, I would provide
9 that for him, too.

10 Q Okay.

11 Do you have separate work forces or did
12 you for Accurate and Engineered Concrete?

13 A No.

14 Q No. So other trades, laborers, office
15 staff, everything was interchangeable?

16 A Yes, as much as we could do.

17 Q Okay.

18 Was there a contractual arrangement
19 between Accurate and Franzone for the employment of
20 Local 4 operators?

21 A No, sir, no.

22 Q I apologize if I asked you this already. I
23 am not sure that I did.

24 A That's okay.

1 Q Do you recall Mr. Davis or Mr. Ryan ever
2 working for Accurate and Franzone on the same day?
3 In other words, could they have worked four hours on
4 one and then --

5 A No.

6 Q Okay.

7 Did you pay, Frank, for time that
8 Mr. Davis or Mr. Ryan spend traveling to and from a
9 job?

10 A Yes.

11 Q Okay. And was that paid based on whether
12 the job they were going to was a union job or a
13 nonunion job?

14 A They were paid under the right period.

15 Q So if they were going to an Accurate job,
16 they received pay the entire day?

17 A From the time they leave to the time they
18 come back. When they quit, they are done.

19 Q Let's talk about quitting a little bit.
20 What is their obligation once they come back to the
21 shop? Let's say they have been out at an Accurate
22 job.

23 A Goodbye. They would be going home. If they
24 worked a job as union and they were done at

1 one o'clock, they go home. I don't even see them.
2 They disappear.

3 Q Do they have to --

4 A No, not see me.

5 Q Not to see you. Do they have to clean the
6 trucks, anything they need to do once they get back
7 to the shop?

8 A No, they don't clean trucks.

9 Q Who cleans the trucks?

10 A If we have a laborer out there -- by the
11 way, they generally clean them before they come back.
12 That's what they are supposed to do. That's what I
13 used to do.

14 Q Well, what about the pump? And you can
15 educate me on this. The concrete pump, is there any
16 maintenance or cleaning that's involved in that after
17 a job?

18 A There is some maintenance if something lets
19 go in a machine and you bring it into the shop.
20 Right now we have an \$18,000 piece that blew out on a
21 job a year ago. We finally got the piece because it
22 had to be made and put back. I wanted to sell the
23 machine. It's in good running order.

24 Other than that it's mostly greased.

1 It's supposed to be. Did you hear what I said? It's
2 supposed to be greased.

3 Q Right. And when does that get done?

4 A It doesn't.

5 Q It doesn't. Okay. Fair enough.

6 All right. Brian Davis, so he is your
7 nephew?

8 A Yes, he is.

9 Q Okay. Do you recall how long he has been
10 with you in an employed capacity?

11 A Starting when he was 18-years old. He is 55
12 or 56 now, about 40 years.

13 Q Okay. And what did he do for you when he
14 started working?

15 A He used to work with me as a mason's tender
16 when I was in the masonry construction business,
17 moving block, building staging, a laborer.

18 Q Okay. Do you recall when he got his Local 4
19 book?

20 A No, I don't.

21 Q Okay. And when Brian goes out or in the
22 past when he had gone out on a job, he works the
23 machinery? He is operating machinery?

24 A He would generally operate machinery. He

1 does other things as well that are associated with
2 the foaming device he runs on the machine. That's in
3 a separate unit. The foaming device unit has foam,
4 lightweight cellular foam concrete. It's not an
5 aggregate concrete. It's nonstructural. It's a
6 geotechnical fill, fill for pipes and things of that
7 nature. It's a different concrete than what you are
8 accustomed to hearing or knowing of I think.

9 Q Okay. What other responsibilities does
10 Brian have if he is back at the shop or at the
11 office?

12 A Right now?

13 Q Well, in the past. I know right now is a
14 bit of a different story. In the past what would
15 Brian have done for Accurate or Engineered Concrete
16 in addition to going out on jobs and running
17 machines?

18 A He would probably load the truck, get it
19 ready, forklift, load the truck.

20 Q Any maintenance work?

21 A Only minor stuff. If he saw something he
22 wanted to take care of, he would do it. I never
23 stopped them from doing that kind of thing.

24 Q Okay. Did he have any responsibility for

1 helping to bid jobs?

2 A For doing what?

3 Q For helping bid jobs?

4 A No.

5 Q Okay. And you said at some point he served
6 as a foreman?

7 A Yes.

8 Q Okay. And at some point he stopped being a
9 foreman; is that correct?

10 A Yes.

11 Q And you had Shaun at that point?

12 A Exactly.

13 MR. GEIMAN: Okay. This will be
14 Exhibit D. Take a look at this.

15 (Exhibit D marked for identification)

16 A Galvin, is that the guy that's contributing
17 every year?

18 Q No, no. Mr. Galvin is the Secretary of
19 State.

20 A Does he contribute money to the union?

21 Q Not to the union, not that I am aware of,
22 no.

23 A There is big signs on the wall that I was
24 in, and it's his name, William Galvin.

1 Q I am not sure.

2 A You will have to look on the way out.

3 Q Yes.

4 Well, this is a printout from the
5 Secretary of State's website.

6 A Okay.

7 Q It lists what the Secretary of State's
8 Office has as the officers and directors of Accurate
9 Engineered Concrete. The reason I bring it to your
10 attention is certainly your name is listed as
11 president, treasurer, secretary, but if you turn to
12 the second page for me, one of the directors is
13 listed as Brian Davis. So I wanted to ask if you had
14 any recollection as to why Mr. Davis is listed as a
15 director, if there was a purpose to that.

16 A Probably only because he was my nephew, and
17 we needed a director.

18 Q Okay.

19 A Listed or named. I didn't even remember
20 this as a matter of fact. He may not be now. I am
21 not sure. Is this present?

22 Q This is present to my knowledge.

23 A He is. I don't want to tell him that.

24 Q Does he own any of the shares of Accurate

1 Engineered Concrete? Is he is stockholder?

2 A Not to my knowledge. It says here though he
3 does. It says 2000 shares. I think that's what it
4 says, right? No, just says, Number of shares.

5 Okay.

6 Q I am not sure that pertains to Mr. Davis.

7 A All right.

8 Q Okay. But to be clear, because I want to
9 make sure that I have a good understanding of this,
10 Mr. Davis, despite his being listed as a director,
11 you are saying he has no managerial function with
12 Accurate Engineered Concrete?

13 A No.

14 Q Does he do any payroll?

15 A Pardon me?

16 Q Does he handle payroll at all?

17 A Does he handle payroll?

18 Q Does he work on the payroll at all?

19 A No, no.

20 Q Does he hire or fire anybody?

21 A No.

22 Q Okay. And you said he doesn't do any
23 bidding.

24 A No.

1 Q Okay.

2 How about Shaun Ryan, Frank? Does he
3 have any managerial capacity?

4 A He did, yes.

5 Q As a foreman?

6 A Yes.

7 Q Anything besides being a foreman? Did he
8 work in the office?

9 A I told you occasionally if we didn't have
10 work he would stay in the office and estimate, and
11 then of course I went over what he did to make sure
12 there wasn't too many errors made and adjusted them
13 and so forth.

14 Q Do you remember what period of time Shaun
15 did estimating for you, even roughly?

16 A No. It was just periodically, you know. If
17 we didn't have any work, I have to pay him anyway, so
18 maybe he can come in and help us do some estimating.

19 The last one I looked at that he did,
20 he made some gross errors. I finished the job, and I
21 am still owed a hundred grand. So what else?

22 Q When he was estimating was he paid on the
23 Franzone payroll?

24 A No, Engineered Concrete.

1 Q I am sorry. Engineered Concrete. That's
2 right.

3 A That's okay.

4 Q So not on the Accurate payroll but on the
5 Engineered Concrete payroll. Okay.

6 And besides estimating and working as a
7 foreman on the jobs, Shaun had no other managerial
8 function?

9 A No.

10 MR. GEIMAN: Okay. We will mark
11 this as Exhibit E.

12 (Exhibit E marked for identification)

13 Q All right.

14 I will show you something else, Frank.
15 I will tell you what I understand this to be, and I
16 will give you a chance to look at it.

17 A Sure.

18 Q This is a run-down from our payroll auditor
19 of hours remitted per month by Accurate Engineered
20 Concrete for Mr. Davis and Mr. Ryan going back to
21 when Accurate signed with Local 4 in 1992. If you
22 would take a quick skim and I will ask you a few
23 questions about it when you are ready.

24 (Pause)

1 A Yes, sir.

2 Q Okay. If you take a look -- and I apologize
3 because we should have numbered these pages.
4 Hindsight is 20/20. If you would take a look at the
5 fourth page of the document.

6 A Fourth?

7 Q Yes.

8 A Yes, sir.

9 Q Okay. And it should start with Brian
10 Davis's hours for May of '06. Is that the page you
11 are looking at? I think you need to go back one
12 page.

13 So the reason I point out this page,
14 Frank, is you see Mr. Davis's hours, fairly
15 consistent 40-hour weeks, 160, 200, and presumably
16 that's a five-week month, some weeks that are less
17 than 160, but, you know, presumably there could have
18 been vacation, sick hours, who knows. What I want to
19 point out specifically is you see starting in
20 January 2009 there is what I would call a precipitous
21 drop in hours, and that continues through the next
22 page, which takes us through 2017 for Mr. Davis.

23 A Mm-hmm.

24 Q So the reason I point this out is to ask

1 you, if you can, to reflect on what was happening at
2 this point in time, and you have touched on this a
3 bit already. But in January of 2009 why did
4 Mr. Davis's hours go from 160, 200s, down to 22, 32,
5 16?

6 A I have no idea.

7 Q You don't recall?

8 A No, I don't. I really do not.

9 Q Okay. Do you recall for the period
10 before --

11 A I know there is a difference here between he
12 and Shaun.

13 Q Well, we can take a look at Shaun also.

14 A Okay. Continue. I am sorry.

15 Q That's okay. If we take a look at Shaun,
16 there is a similar story. It looks like --

17 A His is only three pages I think.

18 Q Yes, if you look at the second-to-last --

19 A Only 88.3 hours.

20 Q If you look at the second-to-last page of
21 the document right there, you see for Shaun as well
22 there is a period of time in 2006, '07, and '08 where
23 it looks like he is getting paid for 40-hour weeks
24 for the most part, again with some exceptions, and

1 then same story. In January of 2009 his hours drop.

2 Now I know earlier just to maybe jog
3 your memory a bit, Frank, you said that you spoke
4 with Brian and Shaun around January of 2009, and
5 there was a decision -- and please stop me if
6 anything I am telling you is wrong. There was a
7 discussion about moving their hours from Accurate to
8 Engineered Concrete because there wasn't enough union
9 work.

10 A There wasn't enough work.

11 Q Okay.

12 For the period before January of 2009,
13 where Mr. Davis and Mr. Ryan were receiving 40-hour
14 weeks, what was the reason that they were receiving
15 the 40-hour weeks? Was that because there was enough
16 work, or were you paying it despite the work?

17 A I don't really recall. I really don't
18 recall.

19 Q Okay. Do you recall what was going on in
20 your business, businesses around January of 2009 that
21 you made the decision to put Mr. Davis and Mr. Ryan
22 on the Engineered Concrete payroll?

23 A I don't recall. I don't know if that was a
24 bad year in the construction industry and it started

1 to turn the other way. It was decided we couldn't do
2 this any further. We can't give you 40 hours a week.
3 We are not doing anything.

4 We tried. It doesn't work. So let's
5 go back to the real world.

6 Q Okay. So that was a decision that you made
7 as the owner and the president?

8 A It would have been in conjunction with them.

9 Q With Mr. Davis and Mr. Ryan?

10 A Both of them, yes, and they must have
11 recognized it because they continued working for me.

12 Q Okay. I know you said you don't recall the
13 conversation specifically. Would you recall whether
14 you told them that the alternative to this
15 arrangement that we are discussing was to be laid
16 off?

17 A I never told them they would be laid off. I
18 never threaten anybody like that. It was up to me to
19 find the work, whether it was union or nonunion, and
20 keep these guys working and having them have dinner
21 every night and not be worrying about that part of it
22 as well.

23 Q Right. Do you recall if you had thought
24 about at the time keeping them on the Accurate

1 payroll, having them work for Accurate and/or
2 Engineered Concrete?

3 A I think that's what we talked about, have
4 them work for both. When you are working a union
5 job, you will be paid, and when you are working
6 nonunion, you are paid.

7 There's something missing here and --

8 MR. BOCCHINO: Frank, let Greg ask
9 the questions.

10 Q That's okay.

11 A What you see for payroll is one thing.

12 Q Well that's what I am trying to get at I
13 suppose.

14 MR. BOCCHINO: Hold on, Frank. Let
15 him ask the questions, Frank.

16 THE WITNESS: Yes, I understand.

17 MR. BOCCHINO: Please.

18 THE WITNESS: Yes.

19 Q Do you recall, Frank, if at the time -- let
20 me strike that.

21 Were Mr. Davis and Mr. Ryan working for
22 Engineered Concrete before 2009?

23 A Yes.

24 Q Okay. And it looks to me from the payroll

1 here -- but you can tell me if I am wrong -- that you
2 were paying their hours for Engineered Concrete
3 through the Accurate payroll, and you were paying at
4 the union rate because they were receiving 40-hour
5 weeks.

6 MR. BOCCHINO: Objection.

7 A I was paying their union rates out
8 Engineered? Is that what you said?

9 Q Let me take that back and rephrase.

10 Do you recall, Frank, when Brian and
11 Shaun were working for Engineered Concrete before
12 2009 how they were being paid?

13 A I don't understand the question.

14 Q Do you understand whose payroll they were
15 paid on?

16 A No, I don't.

17 Q Okay.

18 A I am lucky I didn't have any breakfast today
19 because I wouldn't remember.

20 Q Gotcha. Okay.

21 Do you recall discussing with Brian and
22 Shaun or with anyone at the time in 2009 when you
23 made the switch --

24 A Your voice is dropping off. I am sorry.

1 Q Thank you. Thank you for telling me.

2 A I can tune that up a little bit. I just
3 did.

4 Q I will speak up.

5 Do you recall in 2009 whether there was
6 a discussion about keeping Mr. Davis and Mr. Ryan on
7 the Accurate payroll even if you needed to have them
8 work to keep them busy on Engineered Concrete jobs
9 and paying the union rate for that work and paying
10 fringe benefit contributions?

11 A I don't remember that, no.

12 Q Is that something you would have considered
13 do you think?

14 A I would have considered something like that,
15 yes. I would have considered something like that,
16 but I don't recall doing that.

17 Q Okay. And you don't recall why?

18 A No, I really don't.

19 Q Okay.

20 When Mr. Davis and Mr. Ryan's hours for
21 Accurate declined, they stopped receiving benefits
22 from the union. You had discussed this briefly
23 earlier with regard to health insurance, and the
24 union and the funds do have rules in their plan about

1 a certain number of hours that need to be worked or
2 remitted by a company before a Local 4 member would
3 receive health insurance. Are you generally aware
4 of --

5 A No.

6 Q -- maybe not the numbers. Are you generally
7 aware that there is a requirement that a certain
8 number of hours be worked?

9 A No.

10 Q No. Okay.

11 A But I know they had health insurance that I
12 paid for. I think we are still paying for it for one
13 employee, two, three -- no, not even that. I have
14 been moved off it as well.

15 Q Okay. Who is paying for that?

16 A My company has paid for it all the time.

17 Q Which company?

18 A Engineered Concrete.

19 Q Okay. And do you recall if Engineered
20 Concrete paid for health insurance for Mr. Davis or
21 for Mr. Ryan?

22 A Paid for both of them, yes. I know we did
23 because I just realized for the first time not too
24 long ago that for my nephew alone was \$36,000 a year.

1 Q Wow. Okay. Do you know if you are still
2 paying health insurance to this day for either of
3 them?

4 A We stopped those insurances because we don't
5 have any work, and there is no way I can keep up that
6 kind of thing. I just can't do that. So we stopped
7 it. I think Brian is on his wife's insurance now.
8 That's what I understand. I just told him, I can't
9 do this anymore.

10 That's a lot of money, \$36,000. Some
11 people don't earn \$36,000, let alone I pay for their
12 insurance including dental and everything. Anyway --

13 Q You are right. It is a lot of money. It is
14 a lot of money.

15 A Same thing was true of Shaun. He was being
16 taken care of, too, and anyone else that was in the
17 office.

18 Q Is Shaun currently on the health insurance
19 or no?

20 A No, he is not, no. As a matter of fact,
21 they just took him off workmen's comp, too, because
22 they found out he is not as bad as he supposedly was.

23 Q Okay.

24 Do you have any expectation, Frank, of

1 Shaun coming back to work for you?

2 A No.

3 Q Is Brian still -- strike that. Sorry.

4 (Pause)

5 MR. GEIMAN: Here is Exhibit F.

6 (Exhibit F marked for identification)

7 MR. BOCCHINO: Greg, do you have a
8 sense of how much longer you might be? Because if it
9 is a logical time time to take a break, that's what I
10 am asking.

11 MR. GEIMAN: I think I have another
12 half hour, forty minutes if I had to ballpark it.

13 MR. BOCCHINO: Want to take a break?

14 THE WITNESS: I don't mind. Yes, I
15 will take a break.

16 MR. GEIMAN: Why don't we take five,
17 ten minutes.

18 (Short recess taken)

19 Q Frank, so before we broke I had given you
20 this document, Payroll Journal. The first page is
21 for Frank Franzone; the second page is for Accurate
22 Engineered. Why don't you take a look at that, and
23 let me know when you have had a chance.

24 MR. BOCCHINO: Is this a new

1 exhibit? I didn't get that.

2 MR. GEIMAN: I apologize. Take
3 that.

4 Q Okay.

5 The reason I wanted you to take a look
6 at that, Frank, is because it shows that there was a
7 period of time where Brian Davis was receiving a
8 salary from Frank Franzone and was being paid an
9 hourly wage from Accurate. Do you see that on each
10 page?

11 A From Accurate?

12 Q It looks like on the first page for Frank
13 Franzone he was getting paid -- Brian was -- a
14 salary, \$1200, and then if you look at the second
15 page --

16 A Okay.

17 Q If you look at the second page, which is for
18 Accurate Engineered Concrete, he is getting paid his
19 hourly wage, I assume the union rate.

20 A Mm-hmm.

21 Q So the reason I wanted to ask you about that
22 is do you recall why Brian was receiving a salary
23 from Frank Franzone as opposed to an hourly rate?

24 A I don't remember why.

1 Q Okay. Do you know if he still receives a
2 salary to this day from Frank Franzone -- or from
3 Engineered Concrete?

4 A Yes, he does. He also gets a check from
5 Accurate if he works a union job.

6 Q Right. Does he get \$1200 from Engineered
7 Concrete regardless of work he may do for Accurate in
8 the course of a week?

9 A No, that would not happen. The one day that
10 he works union, he gets paid for that. Four days he
11 gets paid out of Engineered. They are two different
12 companies.

13 Q I see. Okay.

14 A If he has been paid like that, we have got
15 to correct it and ask him to make a contribution back
16 to us.

17 Q Okay. So the \$1200 salary is dependent on
18 his work for Accurate? It could be more, could be
19 less, the salary?

20 A The salary probably tells me that it's a
21 40-hour week at 30 bucks an hour.

22 Q Okay. I guess that's what I am wondering.
23 Would Mr. Davis get that 40-hour salary at \$30 an
24 hour from Franzone -- from Engineered Concrete and

1 then receive payment from Accurate above and beyond
2 that if he worked for Accurate in the course of a
3 week?

4 A Is this the same timeframe?

5 Q Mm-hmm, it is, yes.

6 A I don't know why. I don't know why he would
7 get two checks, one that exceeds the dollar value,
8 you know, that he gets in his regular job, which is
9 the Engineered. That wouldn't make any sense to me
10 unless someone screwed up in my office and gave him a
11 check.

12 Okay. Anything else on this?

13 Q Just one more question. So it's your
14 understanding then that regardless of where he works,
15 Mr. Davis is to receive a \$1200 salary a week?

16 A No, that's not what I said.

17 Q Please tell me.

18 A If he worked a union job, he gets that one
19 day. If he works two days, he gets two days. Those
20 two days are deleted from his pay from Engineered
21 Concrete Products. So he might make a thousand
22 dollars for two days and might make a thousand
23 dollars for three days. I don't know exactly how the
24 number comes out.

1 Q Okay.

2 A I know it comes out to more if he does a
3 union as well as a nonunion job. That I know.

4 Q And that's my confusion. That would imply
5 that he is receiving an hourly rate from Engineered
6 Concrete as well, which goes up or down based on the
7 number of hours --

8 A That's correct.

9 Q -- for Engineered.

10 So is salary not the right description
11 for what he receives from Engineered Concrete?
12 Salary connotes a set amount every single week.

13 A Well, then it wouldn't be considered a
14 salary, would it. It would be considered the hours
15 that he works he gets paid based on a \$1200 week and
16 taking out whatever he earns with the union. That
17 would be my explanation.

18 Q Okay.

19 And the last exhibit I have for you to
20 take a look at -- and I do have four copies. This is
21 Exhibit G.

22 (Exhibit G marked for identification)

23 Q You can take a quick look at this as well,
24 Frank. This is another Payroll Journal, again same.

1 A This is in reference to Ryan.

2 Q Yes, this references Shaun Ryan, and I want
3 to point out this is Frank Franzone only. This shows
4 a week in 2012 for Frank --

5 A They are both Frank J. Franzone, Inc.

6 Q Yes, exactly. The only difference between
7 these two is the timing. One is a week in 2012, and
8 the second is a week in 2013. The reason that I
9 point this out or I want to ask you about it is in
10 2012 Shaun appeared to be receiving a salary. It's
11 unclear whether all of his hours in this week were
12 worked for Franzone or not, but putting that aside,
13 he received \$1200 for the week, and then in 2013 for
14 Franzone he was receiving an hourly rate.

15 My question is, do you recall why he
16 was receiving a salary at one point and then an
17 hourly wage a year later? Was there a discussion
18 with him? Was there a reason for this change?

19 A I don't remember. I truly don't remember.
20 I wish I could.

21 Q Okay.

22 To the best of your recollection,
23 Frank, when Shaun stopped working for you before he
24 went out on worker's compensation this year, was he

1 getting an hourly rate from Franzone, from Engineered
2 Concrete, or was he back on the salary?

3 A I don't remember that either. I really
4 don't know.

5 Q Okay. That's fine.

6 (Pause)

7 Q Okay. Frank, does Engineered Concrete do
8 any work for union contractors that you are aware of
9 even if the job is not considered a union job?

10 A Today?

11 Q At any point since --

12 A Would you repeat the question? I am sorry.

13 Q Of course.

14 Can you recall any time that Engineered
15 Concrete worked on a job for a union contractor but
16 it wasn't considered a union job? It wasn't a
17 prevailing rate job, wasn't a state job or a town
18 job.

19 A No.

20 Q Okay.

21 When Brian Davis or Shaun Ryan go to
22 work on a Franzone job -- on an Engineered Concrete
23 job -- I will eventually get that through my head.

24 A No, you won't.

1 Q You are right. No, I am not.

2 Have they ever to your knowledge been
3 asked for their union book? Have either of them ever
4 told you that they were asked for their union book on
5 a Franzone -- on an Engineered Concrete job?

6 A No. Engineered Concrete would be a nonunion
7 job anyway. So why would anyone ask them for a card?
8 Have they ever been asked on a union job? I have no
9 idea. I am not there. I would assume they probably
10 have been.

11 Q Okay.

12 You mentioned S&F Concrete.

13 A Yes, sir.

14 Q Which is, as you know, a union signatory.

15 A Absolutely.

16 Q Has Franzone -- has Engineered Concrete ever
17 worked for S&F Concrete that you can recall?

18 A Not until this time, never. I know the man.
19 He put me onto a couple of jobs, as a matter of fact,
20 some years ago with Moriarty Construction.

21 Q As Engineered Concrete or as Accurate?

22 A That was Engineered Concrete. I don't think
23 Moriarty was union at the time. Might have been. I
24 don't remember. I know it was in Watertown

1 someplace, the industrial park. That's all I
2 remember.

3 Q Was S&F Concrete a subcontractor to Moriarty
4 on that job?

5 A No. They were supposed to be the contractor
6 for leveling some floors in a large building, and
7 they couldn't do it because they didn't have the
8 product. So I got called in.

9 Q I see. So you --

10 A Rodney let the job go. He says, I can't do
11 this, Frank. Why don't you do it on your own.
12 That's fine. That was okay.

13 Q So you did the work in lieu of S&F Concrete?

14 A Yes, yes.

15 Q Okay.

16 You had mentioned that Brian Davis is
17 your nephew.

18 A Yes.

19 Q I think you also mentioned that your
20 brother-in-law, Ralph Gaeta, was an officer at some
21 point?

22 A I think that's an error.

23 Q Okay.

24 Besides Brian and Ralph, were there any

1 other family members of yours at any time that worked
2 for either Franzone -- Engineered Concrete or
3 Accurate?

4 A No.

5 Q You had mentioned that you own the building
6 that Accurate and Engineered Concrete work out of.

7 A Yes.

8 Q Do you receive rent from those two entities?

9 A The only time I ever received rent was just
10 recently, and prior to that, yes, we split the rent
11 between Engineered Concrete and Accurate Engineered.
12 Each one of them paid me a yearly rent, which was way
13 less than what I could get today.

14 Q I am sure. I don't doubt it. Do you recall
15 how much last year?

16 A I think it was \$28,000 per company, \$56,000
17 for the year.

18 Q Okay. And in 2017 that would be your guess
19 as to --

20 A Yes. Never changed it. It's always been
21 the same.

22 Q Okay. And is Maxxon now paying rent?

23 A Yes. They pay 5900 per month for half the
24 space, not even half the space. My building is

1 9500 square feet.

2 Q Okay. Did Maxxon purchase equipment as
3 well?

4 A Some of the equipment, yes, that goes with
5 what they do, gypsum.

6 Q Okay. The equipment that they purchased,
7 Frank, was that equipment that had previously been
8 owned by Engineered Concrete or Accurate or both?

9 A Engineered Concrete.

10 Q Just Engineered Concrete?

11 A Right, exactly.

12 Q Okay. What else was part of that purchase
13 from Maxxon?

14 A That's it.

15 Q Just the equipment?

16 A The equipment and my name. They kept the
17 name. They could have named it anything they wanted
18 to. I think it was easier for them to keep
19 Engineered Concrete because we have been out there
20 for 32, 33 years doing gypsum.

21 Q All right. Was there any discussion with
22 Maxxon about a purchase of the union business as well
23 of Accurate?

24 A No. I asked them about that because I was

1 interested myself as to whether or not they would
2 pursue union work. They said no.

3 Q Okay.

4 A That doesn't mean anything.

5 Q Okay.

6 A That only means if a job came across that
7 they could handle and had some union people -- I
8 think they have some union people at some of their
9 other companies. They have one down in Connecticut.
10 Maybe they would be interested in taking on some
11 union work. The fellow that has most of that tied up
12 today is SPS.

13 Q They do a lot of work.

14 A Yes, I know. He is the one I gave mine off
15 to.

16 Q Right.

17 Do you have any plans, Frank, to sell
18 or to seek to sell the assets of Accurate Engineered
19 Concrete?

20 A I don't think there are any. No, I don't.

21 Q Is there some equipment that's owned by
22 Accurate exclusively?

23 A Yes, there is a few pieces.

24 Q What kind of pieces, if you recall?

1 A There is an old pump. I just related to it
2 a short while ago. We just bought a part for it.

3 Q That's the one that needed maintenance?

4 A Those pumps are different from other pumps
5 by the way. They are not valued -- you know, they
6 are not the \$3 million pumps that F & S uses or used
7 to use or any of those guys. They are not that kind
8 of pump at all.

9 Q Right.

10 A Actually we could do some of our work with a
11 Gypsymatic II, which is a gypsum machine, because it
12 has the same type of construction in the machine.
13 That's basically it.

14 Q Okay. So besides the old pump, anything
15 else that Accurate --

16 A We have got a volumetric machine. Yes, we
17 have a volumetric machine. That's maybe 25-years
18 old. I bought -- when I did my first union job in
19 New York and I was nonunion -- and they took me
20 because I was the only guy that could do it.

21 Q Good.

22 A Pretty good.

23 Q High compliment, yes.

24 A The company was doing \$3 billion a year at

1 that time.

2 MR. BOCCHINO: Frank.

3 A Okay. What else?

4 Q Any vehicles owned by Accurate that you are
5 aware of?

6 A No.

7 Q Okay. When --

8 A Well -- no. The pickup truck belongs to
9 Engineered. We kept that.

10 Q Okay.

11 When Brian or Shaun would go to a job,
12 even if it was an Accurate job, would they use an
13 Engineered Concrete truck to drive to and from?

14 A More than likely, yes. They did, yes.

15 Q Okay. And there were times, I would
16 imagine, where they used Engineered Concrete
17 equipment on an Accurate job or vice versa?

18 A Yes, that was absolutely true. We had a
19 flatbed, and if we needed other equipment, we would
20 put it on a flatbed and take it out to a job.

21 Q Okay.

22 The equipment only by Accurate, Frank,
23 is there any money owed on any of it? Do you owe any
24 banks, credit lenders, anything?

1 A No.

2 Q Okay. Do you know if there is any blanket
3 liens by any banks?

4 A No.

5 Q On Accurate?

6 A No.

7 Q Okay.

8 (Pause)

9 Q Would you have a copy, do you know, if there
10 is a lease that exists between yourself and Accurate
11 and --

12 A A lease?

13 Q A rental lease for the period of time where
14 Accurate and Engineered Concrete were your tenants in
15 the building in Haverhill? Do you recall ever having
16 signed any paperwork?

17 A I didn't, not even the people that are
18 there.

19 Q Maxxon hasn't signed a lease?

20 A No. They want it for three months only, and
21 they sent me a check for two months, and they will
22 owe me one month, unless they decide to buy the
23 building. That's something else.

24 Q Have there been any discussions about Maxxon

1 buying the building?

2 A I think there was, yes. They said, no, they
3 weren't interested in it, but they were interested in
4 leasing it for a time, three months, which would take
5 us to the end of the year.

6 Q I see. So after the end of this year,
7 Accurate will still be a tenant, but the other side
8 of the building will be empty? There will be no
9 tenant in that?

10 A That's right.

11 Q Okay.

12 (Pause)

13 Q Were you ever actively soliciting union work
14 after you signed with Local 4, Frank, or was it just
15 a matter of you have people come to you and tell you
16 that they are either union or nonunion?

17 A I never solicited because that just doesn't
18 happen in our industry. Some of the guys that knew
19 me, they would call me, you know, and that's how I
20 was on a job with them. Other than that, no, I never
21 physically looked. I never did that.

22 Customers I had had before and worked
23 for, they would call me and say, Frank, we have a job
24 coming up, and I would like you to take a look at it.

1 In some cases we won them. There
2 wasn't a lot.

3 MR. BOCCHINO: You answered the
4 question. That's good.

5 Q Okay.

6 Do you consider, Frank, the work that
7 Engineered Concrete does to be the type of work that
8 Local 4 operators do?

9 A No.

10 Q How so?

11 A Well, I think my work should have gone to a
12 concrete finishing company, like S&F. It started off
13 with gypsum companies because gypsum makes the
14 product. That was a mistake when back when. They
15 should have looked for people that were in the
16 structural concrete aspect of the business because it
17 just relates one to the other.

18 Q Okay. But when Brian or Shaun would go and
19 do work for Engineered Concrete, or if they were to
20 go do work for Accurate, was there any substantial
21 difference?

22 A No.

23 Q In the type of work they were doing?

24 A None. Exactly the same.

1 Q Exactly the same. And do you agree that the
2 work Accurate was doing was covered by the collective
3 bargaining agreement with Local 4?

4 MR. BOCCHINO: Objection.

5 A Repeat it again, please. I am sorry.

6 Q Do you agree that the work Accurate
7 Engineered did and continues to do is the type of
8 work covered under your agreement with Local 4?

9 MR. BOCCHINO: Objection.

10 A No.

11 Q Why not?

12 A Well, first off, they were two different
13 things. One is a union job, and one is a nonunion.

14 Q I am talking about Accurate, the union jobs.
15 I am talking about what you consider to be the union
16 jobs, the work that was done for Accurate. Is that
17 work in your estimation, in your opinion that is
18 covered under the collective bargaining agreement
19 with Local 4?

20 A I don't know. I don't know.

21 Q Okay.

22 Let me ask you to refer back to
23 Exhibit B. I think you have it in front of you
24 there. If you could take a look at page 20. It

1 should be the same page as you were on earlier.

2 A Twenty?

3 Q Yes.

4 A Okay.

5 Q There you go. If you can take a look under,
6 Scope of Employment, Section 1, and just read that
7 paragraph, not out loud.

8 A Up here?

9 Q Yes. Read that to yourself.

10 (Pause)

11 Q Let me know when you are done.

12 A Yes, sir.

13 Q Okay. Is the type of work that Accurate
14 Engineered Concrete does described in this provision?

15 A No.

16 Q How so?

17 MR. BOCCHINO: Objection. That's
18 the answer, Greg.

19 A It's totally different. I had to do all
20 this stuff, operate -- it's equipment operation
21 basically.

22 Q Is the work that Brian and Shaun have done
23 in the past for you equipment operation?

24 A Different all together. You are talking

1 about heavy-duty and talking about minimal, you know,
2 really -- no, I don't agree with that at all, not
3 what I just read anyway.

4 Q Tell me --

5 A I used to have a license to drive and
6 operate the equipment.

7 MR. BOCCHINO: Just answer his next
8 question.

9 Q Tell me about the kinds of jobs that
10 Accurate Engineered Concrete does.

11 A Generally floor fill.

12 Q Floor for buildings?

13 A Referring to gypsum, floor fill. That's all
14 it is.

15 Q So floor meaning --

16 A Floor fill, three-quarters of an inch,
17 an inch, depending on what they want.

18 Q What kind of projects would that be on?

19 A Residential, generally apartment buildings,
20 condominiums, sometimes an old rehab.

21 Q Okay.

22 (Pause)

23 Q I am going to ask you to take a look at
24 page 41 of the document.

1 A Same document here?

2 Q Yes, please.

3 (Pause)

4 A Yes, sir.

5 Q You see the Section C, Article II,
6 "Jurisdiction," under the subheading "Jurisdiction"
7 on page 41?

8 A I am looking at overtime special provisions.

9 Q Look above.

10 A Above, "Jurisdiction."

11 Q See where it says "Jurisdiction"?

12 A Okay.

13 Q Take a look at that.

14 (Pause)

15 A Okay.

16 Q You see there the mention of concrete
17 mixers, concrete pumps, concrete pavers? Is this the
18 type of equipment that your men used?

19 A No.

20 MR. BOCCHINO: Where do you see
21 that?

22 A No. If we had a concrete mixer, we would
23 have asked a concrete company to come in and pour
24 concrete for us.

1 MR. BOCCHINO: Just point for me.

2 MR. GEIMAN: Concrete pumps,
3 concrete pavers, concrete finishing machines
4 (indicating).

5 MR. BOCCHINO: And what's the
6 question?

7 Q And concrete mixers I should also point out
8 in the fourth line.

9 What I am asking is whether this is
10 equipment that Accurate Engineered Concrete used --

11 A No.

12 Q -- on its jobs.

13 A No.

14 Q What kind of equipment does Accurate
15 Engineered Concrete use?

16 A I call them mono pumps, if you are talking
17 about a pump.

18 Q Pumps are listed, if you take a look under
19 "Jurisdiction," the third line, machinery operated by
20 steam or mechanical power, including pumps,
21 compressors.

22 A Steam, no.

23 Q Or mechanical power.

24 A Excuse me?

1 Q Or mechanical power.

2 A I don't understand the question.

3 "Mechanical power," what does that mean?

4 Q It means that there is equipment that men
5 are operating mechanically.

6 A Yes. Okay.

7 Q All right.

8 (Pause)

9 MR. BOCCHINO: Wait for a question.

10 Q The last thing I will ask you is to take a
11 look at, Frank, in this document is on page 55. It's
12 Section 2 at the bottom of the page.

13 A You said 55?

14 Q Yes, Section 2, highlighted Section 2.

15 A Read that?

16 Q Yes. Let me know when you are done. You
17 don't need to read the subsection a.

18 (Pause)

19 Q So the collective bargaining agreement
20 contains a provision that fringe benefit
21 contributions are to be remitted to the Funds for
22 every payroll hour for work by a person covered by
23 the agreement.

24 Are you aware generally of that

1 obligation?

2 A No, I don't think I have ever seen this.

3 Q So you are not aware of the obligation to
4 pay fringe benefit contributions?

5 A No.

6 Q Okay. Who in your office would have been
7 aware of that obligation?

8 A I don't know. It could be Cynthia, but I
9 don't know that either. It could be. You are asking
10 a question, and I am trying to give you the answer.

11 Q I understand.

12 Has Cynthia ever spoken with you about
13 the payment of fringe benefit contributions?

14 A No.

15 Q So you are not aware of the obligation to
16 pay contributions to the Funds?

17 A We do when they are paid, don't we?

18 Q Well, that's what I am asking, if you are
19 aware of that obligation.

20 A If we are making out a check for somebody
21 for a number of hours, there are fringe benefits they
22 are getting, too, aren't they?

23 Q For Accurate?

24 A Yes.

1 Q But not for Engineered Concrete, correct?

2 A No, no, there is no fringe benefits for a
3 nonunion company.

4 Q Okay.

5 Is Accurate or has Accurate or
6 Engineered Concrete made any payments to Shaun or
7 Brian in lieu of contributions to compensate them for
8 pension or annuity money they may have lost?

9 MR. BOCCHINO: Objection.

10 A No.

11 Q Okay.

12 In your estimation, Frank, was Accurate
13 seeking to avoid an obligation to remit contributions
14 for operators?

15 MR. BOCCHINO: Objection.

16 A No, absolutely not.

17 MR. GEIMAN: Okay. I have no
18 further questions.

19 MR. BOCCHINO: No questions.

20

21 (Off the record at 1:39 PM)

22

23

24

FRANK J. FRANZONE

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C E R T I F I C A T E

I, FRANK J. FRANZONE, do hereby
 certify that I have read the foregoing transcript
 of my testimony and further certify that to the
 best of my knowledge said transcript is true and
 accurate (with the exception of the following
 corrections listed below):

Page	Line	Correction and Reason for Change
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Dated this ____ day of _____, 2018.
 Signed under the pains and penalties of perjury.

 FRANK J. FRANZONE

Sworn to and subscribed before me this ____
 day of _____, 2018.

 Notary Public

My commission expires:

1 COMMONWEALTH OF MASSACHUSETTS)
2 NORFOLK, SS.)
3
4
5
6
7

8 I, DIANE L. McELWEE, Certified Shorthand
9 Reporter and Notary Public in and for the
10 Commonwealth of Massachusetts, do hereby certify
11 that there came before me on the 13th day of
12 November, 2018, at 11:44 AM, the person
13 hereinbefore named, who was by me duly sworn to
14 testify to the truth and nothing but the truth
15 touching and concerning the matters in controversy
16 in this cause; that there was an examination under
17 oath and the examination was reduced to transcript
18 form under my direction and that the deposition is
19 a true record of the testimony given by the witness.

20 I further certify that I am neither
21 attorney nor counsel for, nor related to or employed
22 by any of the parties to the action in which this
23 deposition is taken; and further that I am not a
24 relative or employee of any attorney or counsel
employed by the parties hereto or financially
interested in the action.

In witness whereof, I have hereunto set
my hand and seal this _____ day of November, 2018.

DIANE L. McELWEE, Notary Public
My commission expires:
December 17, 2021